

Appl. No.: 10/520,738
Amdt. Dated: February 11, 2009
Reply to Office action of August 29, 2008

REMARKS/ARGUMENTS

Request for Continued Examination

Applicants file concurrently herewith a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. The instant paper constitutes Applicants' required submission under 37 C.F.R. § 1.114 to accompany the RCE.

Status of the Claims

Claims 71-74 have been allowed.

Claims 22-27, 58, 62-70, and 75 stand rejected.

Claims 1-21, 28-57, and 59-61 have been previously cancelled.

Applicants have amended claim 22 to insert "and" at the end of part (d). The word "and" was inadvertently omitted between Markush group members (d) and (e) when Applicants amended claim 22 in their Amendment filed June 12, 2008. The amendment of claim 22 is purely formal in nature and thus, does not introduce new matter.

Applicants have amended claim 75 to correct an obvious typographical error. In particular, Applicants have amended this claim to replace the term "lentil" with the term --wheat--. Applicants inadvertently recited a "hybrid lentil seed" instead of a "hybrid wheat seed" when they presented this new claim in their last response to the Office. Support for the amendment of claim 75 can be found in the original claims and the specification, particularly in paragraphs 040, 041, 043, and 091-096.

No new matter has been added by way of amendment of the claims.

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Reexamination and reconsideration of the application as amended are respectfully requested.

The Rejection of the Claims under 35 U.S.C. § 112, Second Paragraph, Should Be Withdrawn

Claims 75 has been rejected under 35 U.S.C. § 112, second paragraph for being indefinite. Claim 75 has been amended. This rejection is respectfully traversed.

The Office Action indicates that claim 75 is indefinite because a wheat plant cannot be “produced by growing a hybrid lentil seed” as recited in this claim.

To overcome this rejection, Applicants have amended claim 75 to correct an obvious typographical error. In particular, Applicants have amended this claim to replace “lentil” with --wheat--.

In view of the amendment of claim 75 and the above remarks, it is submitted that the rejection of the claims under 35 U.S.C. § 112, second paragraph, should be withdrawn.

The Rejection of the Claims under 35 U.S.C. § 103(a) Should Be Withdrawn

Claims 22-27, 58, and 62-70 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Pozniak *et al.*, U.S. Patent Publication No. 2004/0237134, which claims the benefit of U.S. Provisional Application No. 60/311,282, filed August 9, 2001. Claim 22 has been amended. This rejection is respectfully traversed.

The Office Action indicates that Pozniak *et al.* disclose a wheat plant comprising a polynucleotide that differs from instant SEQ ID NO: 3 of the instant application by one nucleotide but encodes an identical polypeptide. The Examiner asserts the instant claims would

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have been *prima facie* obvious to one of ordinary skill in the art at the time of Applicants' invention.

Without taking any position with respect to the teachings of Pozniak *et al.* (U.S. Patent Publication No. 2004/0237134) at this time, Applicants call to the attention of the Examiner that U.S. Provisional Application No. 60/311,282, filed August 9, 2001, does not disclose the nucleic acid and/or amino acid sequence of any wheat AHAS. U.S. Patent Publication No. 2004/0237134 is the patent application publication of U.S. Application No. 10/486,605, which is the U.S. National Stage of International Application No. PCT/ICA02/01051, filed **July 10, 2002**. Applicants respectfully remind the Examiner that the instant application is the U.S. National Stage of International Application No. PCT/IB2003/004645, filed July 9, 2003, and which claims the benefit of U.S. Provisional Application No. 60/394,991, filed **July 10, 2002**.

Given that U.S. Provisional Application No. 60/311,282 fails to disclose the nucleic acid sequence of a polynucleotide that differs from instant SEQ ID NO: 3 of the instant application by one nucleotide and further given that International Application PCT/ICA02/01051 (for which U.S. Application No. 10/486,605 is its U.S. National Stage) was not filed before July 10, 2002, the Examiner has failed to make a *prima facie* case of obviousness with respect to claims 22-27, 58, and 62-70 based on the teachings of Pozniak *et al.* Accordingly, the rejection of the claims under 35 U.S.C. § 103(a) should be withdrawn.

CONCLUSION

In view of the above amendments and remarks, Applicants submit that the rejections of the claims under 35 U.S.C. §§ 103 and 112 are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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